

Claimant works as an IT hardware technician for respondent installing and relocating computers. On direct examination, claimant testified she first injured her back on Friday, April 24, 1998, while carrying a computer monitor up a set of stairs. She felt a

“pull” in her back. She experienced immediate discomfort that turned into pain that night and the next morning. The accident occurred late in the shift and claimant did not report the accident that day. According to claimant, she used a heating pad most of Saturday. On Sunday evening, claimant went to the Wichita Clinic and was given a muscle relaxant and anti-inflammatory medication.

Claimant testified that the following Monday she reported the back injury to her supervisor, Sheldon Lawrence, and told him it began while carrying a computer monitor up stairs at work. That Monday claimant had additional difficulty with her back and also became sick from the medication. A coworker, Don DeHammer, took her home. Claimant was off work for approximately one month and received treatment from Dr. Robert J. Fowler. Dr. Fowler thought claimant might have a herniated disc but based on an MRI determined she had a bulging disc with degenerative disc disease at L3-4 and L4-5 without nerve impingement. Claimant was, at this time, a probationary employee and did not yet qualify for health insurance coverage. Claimant's husband had health insurance that paid the medical expenses.

After treatment by Dr. Fowler, claimant returned to work with a 15-pound lifting restriction but continued to have symptoms. In September 1999, approximately a year and a half later, the back symptoms worsened and claimant again sought medical treatment. Respondent refused to have the treatment paid for under workers compensation, and claimant filed for the current preliminary hearing. The ALJ's Order makes no finding for the alleged April accident but awarded the requested benefits based on a finding that claimant sustained a compensable injury in September 1999.

The litigants have, both in the preliminary hearing and on appeal, focused on whether claimant sustained an injury on April 24, 1998. After reviewing the record, the Board concludes claimant has not proven that she did. The initial medical records included, and several coworkers testified, that in April 1998 claimant consistently described an onset of symptoms at home while washing the dishes but made no mention of a work-related incident. The records from Immediate Care report that claimant started having spasms after she lifted her two-year-old child and returned to washing dishes. The record of the first visit to Dr. Fowler on April 28, 1998, contains a similar history: “She states the pain began Sunday about 1:30 while she was standing doing the dishes.” Dr. Fowler's records go on to mention that claimant's back went out one time five or six years ago, but the record contains no reference to an incident at work.

Two coworkers and claimant's supervisor all testified that when claimant came to work on Monday, April 27, she told them of an injury at home but did not say anything about an injury at work. Mike Farrar testified very specifically about his conversation with claimant that morning:

She had stated that over the weekend she was doing dishes and she bent over to pick something up from under the sink, either a jug or a bottle, is what she first said,

and then she couldn't remember what she bent over to pick up, but when she bent over to pick up her back popped. And I asked if it was like a cracking pop, like I can crack my back (indicating), but it wasn't that kind of pop, it was another kind of pop, and she was unable to stand up straight without pain.¹

Donald DeHammer, the worker who took claimant home that Monday, also testified that claimant only mentioned an injury at home:

She said over the weekend she was washing dishes and hurt her back. And she went to the doctor over the weekend and was on medication and was in extreme pain in her back.²

Mr. Lawrence, claimant's supervisor, testified claimant told him she had hurt her back over the weekend but did not mention anything about an injury at work. Mr. Lawrence further testified he did not know she was claiming the back problems were work related until November 1999, shortly after he had asked claimant to provide him with an update of her work restrictions.

Based on this evidence, the Board is convinced claimant suffered an onset of, or at least an increase of, symptoms while washing dishes at home on April 26, 1998. This leaves open the possibility that claimant also felt a pull, as she testified, at work on April 24, 1998, and then the symptoms became worse at home while washing dishes. This ultimately became claimant's testimony. But as important as the incident of washing dishes seems to have been at the time, it was not mentioned in claimant's direct testimony. Claimant also signed a document relating to notice of the work restrictions that indicated the injury was not work related. The Board concludes, in this instance, the contemporaneous statements carry greater weight as evidence of what caused claimant's back difficulty.

The Board also finds the evidence does not establish an injury from work in September 1999. Claimant sought additional medical treatment and the history does not suggest claimant seeks medical treatment without cause. But the evidence that claimant experienced a worsening caused by work is limited to what appears to be speculation by the claimant and a reference in the medical records to pain while standing at work.

The evidence indicates claimant was not symptom free after the April 1998 incident. She continued to have pain. Claimant also worked with a 15-pound lifting restriction after April 1998. In November 1999, respondent asked claimant to provide an update on the restriction, noting the 15-pound lifting restriction was temporary. At that time claimant advised she was making a workers compensation claim, apparently referring to injury in

¹ Preliminary Hearing Transcript, Page 44, L. 13-23

² Preliminary Hearing Transcript, Page 46, L. 25; Page 47, L. 1

April 1998. When asked at the preliminary hearing about what caused her back to become worse in September 1999, claimant testified:

Well, all I can think of is I became irritated that some -- we had a lot of PCs coming in at work and I was irritated that they weren't getting set up quick enough. So I was scooting them around and moving them more than I should have.

Claimant went to Dr. Fowler in October 1999. His notes mention pain at work but do not express an opinion about a new injury:

I have not seen her for over a year. From what she says, her insurance company switched her to a different PCP. She is now back here. . . . I had seen her in the past with some back pain which apparently has continued to bother her. The pain is in the lower back and radiates towards the buttocks bilaterally. In the past she had had some leg radiation but she has not recently. It bothers her with work, with standing and by noon often times the pain is bothering her.

The Board concludes this evidence falls short of establishing a new aggravation or injury in 1999.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge John D. Clark on February 1, 2000, should be, and the same is hereby, reversed.

IT IS SO ORDERED.

Dated this ____ day of March 2000.

BOARD MEMBER

c: Stephen J. Jones, Wichita, KS
Vincent A. Burnett, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director